

§§ 767.203–767.250 [Reserved]

Subpart F—Exception Authority

§ 767.251 Agency exception authority.

On an individual case basis, the Agency may consider granting an exception to any regulatory requirement or policy of this part if:

(a) The exception is not inconsistent with the authorizing statute or other applicable law; and

(b) The Agency's financial interest would be adversely affected by acting in accordance with published regulations or policies and granting the exception would reduce or eliminate the adverse effect upon the its financial interest.

PARTS 768 [RESERVED]

PART 769—HIGHLY FRACTIONATED INDIAN LAND LOAN PROGRAM

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AUTHORITY: 5 U.S.C. 301, 7 U.S.C. 1989, and 25 U.S.C. 488.

SOURCE: 80 FR 74970, Dec. 1, 2015, unless otherwise noted.

§ 769.101 Purpose.

(a) This part contains regulations for loans made by the Agency to eligible intermediary lenders and applies to intermediary lenders and ultimate recipient involved in making and servicing Highly Fractionated Indian Land (HFIL) loans.

(b) The purpose of the HFIL Loan Program is to establish policies and procedures for a revolving loan fund through intermediary lenders for the purchase of HFIL by a Native American tribe, tribal entity, or member of either.

§ 769.102 Abbreviations and definitions

(a) *Abbreviations.* The following abbreviations are used in this part:

BIA—The Department of the Interior's Bureau of Indian Affairs (BIA).

HFIL—Highly Fractionated Indian Land.

(b) *Definitions.* The following definitions are used in this part:

Administrator means the head of the Farm Service Agency or designee.

Highly Fractionated Indian Land (HFIL) means for the purpose of this part only, Highly Fractionated Indian Land is undivided interests held by four or more individuals as a result of ownership or original allotments passing by state laws of intestate succession for multiple generations.

Indian Country land, communities, and allotments means the following:

(1) All land within the limits of any Indian reservation under the jurisdiction of the U.S. Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation,

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same; or

(4) All land, communities, and allotments that meet the definition of 18 U.S.C. 1151.

Intermediary lender means the entity requesting or receiving HFIL loan funds for establishing a revolving fund and relending to ultimate recipients.

Intermediary relending agreement means the signed agreement between FSA and the intermediary that specifies the terms and conditions of the HFIL loan.

Native American tribe means the following:

(1) An Indian tribe recognized by the U.S. Department of the Interior; or

(2) A community in Alaska incorporated by the U.S. Department of the Interior pursuant to the Indian Reorganization Act.

Revolving funds means a fund that has two types of deposit accounts, one of which will be HFIL funds from FSA and the other will be comprised of repayments of loans from the ultimate recipients, interest earned on funds in the account and cash, or other short-term marketable assets that the intermediary lender chooses to deposit. Revolving funds are not considered Federal funds.

Tribal entity means an eligible entity established pursuant to the Indian Reorganization Act.

Ultimate recipient means Native American tribe, tribal entity, or member of either that receives a loan from an intermediary lender's HFIL revolving fund.

Undivided interest means a common interest in the whole parcel of land that is owned by two or more people. Owners of undivided interest do not own a specific piece of a parcel of land; rather they own a percentage interest in the whole.

§ 769.103 Eligibility requirements of the intermediary lender.

(a) *Eligible entity types.* The types of entities that may become an intermediary lender are:

(1) Private and Tribal operated non-profit corporations;

(2) Public agencies—Any State or local government, or any branch or agency of such government having authority to act on behalf of that government, borrow funds, and engage in activities eligible for funding under this part;

(3) Indian tribes or tribal corporations; or

(4) Lenders who are subject to credit examination and supervision by an acceptable State or Federal regulatory agency.

(b) *Intermediary lender requirements.* The intermediary lender must:

(1) Have the legal authority necessary for carrying out the proposed loan purposes and for obtaining, giving

security for, and repaying the proposed loan;

(2) Have a record of successful lending in Indian Country and knowledge and experience working with the BIA. The Agency will assess the applicant staff's training and experience in lending in Indian Country based on recent experience in loan making and servicing with loans that are similar in nature to the HFIL program. If consultants will be used, FSA will assess the staff's experience in choosing and supervising consultants; and

(3) Have an adequate assurance of repayment of the loan based on the fiscal and managerial capabilities of the proposed intermediary lender.

(c) *The Intermediary Relending Agreement.* The intermediary lender and the Agency will enter into an Intermediary Relending Agreement, satisfactory to the Agency based on:

(1) Loan documentation requirements including planned application forms, security instruments, and loan closing documents;

(2) List of proposed fees and other charges it will assess the ultimate recipients;

(3) The plan for relending the loan funds. The plan must have sufficient detail to provide the Agency with a complete understanding of the complete mechanics of how the funds will get from the intermediary lender to the ultimate recipient. Included in the plan are the service area, eligibility criteria, loan purposes, rates, terms, collateral requirements, a process for addressing environmental issues on property to be purchased, limits, priorities, application process, analysis of new loan requests, and method of disbursement of the funds to the ultimate recipient;

(4) Loan review plans that specify how the intermediary lender will review the loan request from the ultimate recipient and make an eligibility determination;

(5) An explanation of the intermediary lender's established internal credit review process; and

(6) An explanation of how the intermediary lender will monitor the loans to the ultimate recipients.

§ 769.104 Requirements of the ultimate recipient.

(a) Ultimate recipients must be individual Tribal members, Tribes or eligible Tribal entities, with authority to incur the debt and carry out the purpose of the loan.

(b) The intermediary lender will make this determination in accordance with the Intermediary Relending Agreement.

§ 769.105 Authorized loan purposes.

(a) *Intermediary lender.* Agency HFIL loan funds must be placed in the intermediary's HFIL revolving fund and used by the intermediary to provide direct loans to eligible ultimate recipients.

(b) *Ultimate recipient.* Loans from the intermediary lender to the ultimate recipient using the HFIL revolving fund:

(1) Must be used to acquire and consolidate at least 50 percent of the highly fractionated Indian land parcel and interests in the land. The interests include rights-of-way, water rights, easements, and other appurtenances that would normally pass with the land or are necessary for the proposed operation of the land located within the tribe's reservation;

(2) Must finance land that will be used for agricultural purposes during the term of the loan;

(3) May be used to pay costs incidental to land acquisition, including, but not limited to, title clearance, legal services, archeological or land surveys, and loan closing; and

(4) May be used to pay for the costs of any appraisal conducted in accordance with this part.

§ 769.106 Limitations.

(a) Loan funds may not be used for any land improvement or development purposes, acquisition or repair of buildings or personal property, payment of operating costs, payment of finders' fees, or similar costs, or for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity as specified in 7 CFR part 12.

(b) The amount of loan funds used to acquire land may not exceed the current market value of the land as deter-

mined by a current appraisal that meets the requirements as specified in 7 CFR 761.7(b)(1).

(c) Agency HFIL loan funds may not be used for payment of the intermediary's administrative costs or expenses. The amount removed from the HFIL revolving fund for administrative costs in any year must be reasonable, must not exceed the actual cost of operating the HFIL revolving fund and must not exceed the amount approved by the Agency in the intermediary lender's annual loan monitoring report.

(d) No loan to an intermediary lender may exceed the maximum amount the intermediary can reasonably expect to lend to eligible ultimate recipients, based on anticipated demand for loans to consolidate fractioned interests and capacity of the intermediary to effectively carry out the terms of the loan.

§ 769.107 Rates and terms.

(a) Loans made by the Agency to the intermediary lender will bear interest at a fixed rate as determined by the Administrator, but not less than 1 percent per year over the term of the loan.

(1) Interest rates charged by intermediary lender to ultimate recipients on loans from the HFIL revolving fund will be negotiated between the intermediary lender and ultimate recipient, but the rate must be within limits established by the Intermediary Relending Agreement.

(2) The rate should normally be the lowest rate sufficient to cover the loan's proportional share of the revolving fund's debt service costs and administrative costs.

(b) No loan to an intermediary lender will be extended for a period exceeding 30 years. Interest will be due annually but principal payments may be deferred by the Agency.

(1) Loans made by an intermediary lender to an ultimate recipient from the HFIL revolving fund will be scheduled for repayment over a term negotiated by the intermediary lender and ultimate recipient but will not exceed 30 years or the date of the end of the term of the HFIL loan, whichever is sooner.

(2) The term of an HFIL loan must be reasonable and prudent considering the

purpose of the loan, expected repayment ability of the ultimate recipient, and the useful life of collateral, and must be within any limits established by the intermediary lender's Intermediary Relending Agreement.

§ 769.108 Security requirements for HFIL loans and the ultimate recipients.

(a) *HFIL loans.* Security for all loans to intermediaries must be such that the repayment of the loan is reasonably assured, taking into consideration the intermediary's financial condition, Intermediary Relending Agreement, and management ability. The intermediary is responsible to make loans to ultimate recipients in such a manner that will fully protect the interest of the intermediary and the Government. The Agency will require adequate security, as determined by the Agency, to fully secure the loan, including but not limited to the following:

(1) Assignments of assessments, taxes, levies, or other sources of revenue as authorized by law;

(2) Investments and deposits of the intermediary; and

(3) Capital assets or other property of the intermediary and its members.

(b) *Liens.* In addition to normal security documents, a first lien interest in the intermediary's revolving fund account will be accomplished by a control agreement satisfactory to the Agency. The control agreement does not require the Agency's signature for withdrawals. The depository bank must waive its offset and recoupment rights against the depository account to the Agency and subordinate any liens it may have against the HFIL depository bank account.

(c) *Ultimate recipient.* Security for a loan from an intermediary lender's HFIL revolving fund to an ultimate recipient will be adequate to fully secure the loan as specified in the relending agreement.

(1) The Agency will only require concurrence in the intermediary lender's security requirement for a specific loan when security for the loan from the intermediary lender to the ultimate recipient will also serve as security for an Agency loan.

(2) The ultimate recipient will take appropriate action to obtain and provide security for the loan.

§ 769.109 Intermediary lender's application.

(a) The application will consist of:

(1) An application form provided by the Agency;

(2) A draft Intermediary Relending Agreement and other evidence the Agency requires to show the feasibility of the intermediary lender's program to meet the objectives of the HFIL Loan Program; and

(3) Applications from intermediary lenders that already have an active HFIL loan may be streamlined by filing a new application and a statement that the new loan would be operated in accordance with the Intermediary Relending Agreement on file for the previous loan. This statement may be submitted at the time of application in lieu of a new Intermediary Relending Agreement.

(4) Documentation of the intermediary lender's ability to administer HFIL in accordance with this part;

(5) Submission of a completed Agency application form;

(6) Prior to approval of a loan or advance of funds, certification of whether or not the intermediary lender is delinquent on any Federal debt, including, but not limited to, Federal income tax obligations or a loan or loan guarantee or from another Federal agency. If delinquent, the intermediate lender must explain the reasons for the delinquency, and the Agency will take such written explanation into consideration in deciding whether to approve the loan or advance of funds;

(7) Prior to approval of a loan or advance of funds, certification as to whether the intermediary lender has been convicted of a felony criminal violation under Federal law in the 24 months preceding the date of application.

(8) Certification of compliance with the restrictions and requirements in 31 U.S.C. 1352, and 2 CFR 200.450 and part 418.

(9) Certification to having been informed of the collection options the Federal government may use to collect delinquent debt.

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(b) An intermediary lender that has received one or more HFIL loans may apply for and be considered for subsequent HFIL loans provided:

(1) The intermediary lender is relending all collections from loans made from its revolving fund in excess of what is needed for required debt service, approved administration costs, and a reserve for debt service;

(2) The outstanding loans of the intermediary lender's HFIL revolving fund are performing; and

(3) The intermediary lender is in compliance with all regulations and its loan agreements with the Agency.

§ 769.110 Letter of conditions.

(a) The Agency will provide the intermediary lender a letter listing all requirements for the loan. After reviewing the conditions and requirements in the letter of conditions, the intermediary lender must complete, sign, and return the form provided by the Agency indicating the intermediary lender's intent to meet the conditions. If certain conditions cannot be met, the intermediary lender may propose alternate conditions in writing to the Agency. The Agency loan approval official must concur with any changes made to the initially issued or proposed letter of conditions prior to acceptance. The loan request will be withdrawn if the intermediary lender does not respond within 15 days.

(b) At loan closing, the intermediary lender must certify that:

(1) No major changes have been made in the Intermediary Relending Agreement except those approved in the interim by the Agency;

(2) All requirements of the letter of conditions have been met; and

(3) There has been no material change in the intermediary lender or its financial condition since the issuance of the letter of conditions. If there have been changes, the intermediary lender must explain the changes to the Agency. The changes may be waived, at the sole discretion of the Agency.

§ 769.111 Loan approval and obligating funds.

(a) Loan requests will be processed based on the date the Agency receives

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the application. Loan approval is subject to the availability of funds.

(b) The loan will be considered approved for the intermediary lender on the date the signed copy of the obligation of funds document is mailed to the intermediary lender.

§ 769.120 Loan closing.

(a) *Loan agreement.* A loan agreement or supplement to a previous loan agreement must be executed by the intermediary lender and the Agency at loan closing for each loan setting forth, at a minimum,

(1) The amount of the loan, the interest rate, the term and repayment schedule,

(2) The requirement to maintain a separate ledger and segregated account for the HFIL revolving fund; and

(3) It agrees to comply with Agency reporting requirements.

(b) *Loan closing.* Intermediary lenders receiving HFIL loans will be governed by this part, the loan agreement, the approved Intermediary Relending Agreement, security instruments, and any other conditions that the Agency requires on loans made from the "HFIL revolving fund." The requirement applies to all loans made by an intermediary lender to an ultimate recipient from the intermediary lender's HFIL revolving fund for as long as any portion of the intermediary lender's HFIL loan from the Agency remains unpaid.

(c) *Intermediary lender certification.* The intermediary lender must include in their file a certification that:

(1) The proposed ultimate recipient is eligible for the loan;

(2) The proposed loan is for eligible purposes; and

(3) The proposed loan complies with all applicable laws and regulations.

§ 769.121 Maintenance and monitoring of HFIL revolving fund.

(a) *Maintenance of revolving fund.* The intermediary lender must maintain the HFIL revolving fund until all of its HFIL obligations have been paid in full. All HFIL loan funds received by an intermediary lender must be deposited into an HFIL revolving fund account. Such accounts must be fully covered by Federal deposit insurance

or fully collateralized with U.S. Government obligations. All cash of the HFIL revolving fund must be deposited in a separate bank account or accounts so as not to be commingled with other financial assets of the intermediary lender. All money deposited in such bank account or accounts must be security assets of the HFIL revolving fund. Loans to ultimate recipients must be from the HFIL revolving fund.

(1) The portion of the HFIL revolving fund that consists of Agency HFIL loan funds may only be used for making loans in accordance with § 769.105. The portion of the HFIL revolving fund that consists of repayments from ultimate recipients may be used for debt service, reasonable administrative costs, or for making additional loans;

(2) An intermediary lender may use revolving funds and HFIL loan funds to make loans to ultimate recipients without obtaining prior Agency concurrence in accordance with the Intermediary Relending Agreement;

(3) Any funds in the HFIL revolving fund from any source that is not needed for debt service, approved administrative costs, or reasonable reserves must be available for additional loans to ultimate recipients;

(4) All reserves and other funds in the HFIL revolving loan fund not immediately needed for loans to ultimate recipients or other authorized uses must be deposited in accounts in banks or other financial institutions. Such accounts must be fully covered by Federal deposit insurance or fully collateralized with U.S. Government obligations, and will be interest bearing. Any interest earned thereon remains a part of the HFIL revolving fund;

(5) If an intermediary lender receives more than one HFIL loan, it does not need to establish and maintain a separate HFIL revolving loan fund for each loan; it may combine them and maintain only one HFIL revolving fund, unless the Agency requires separate HFIL revolving funds because there are significant differences in the loan purposes, Intermediary Relending Agreement, loan agreements, or requirements for the loans; and

(6) A reasonable amount of revolved funds must be used to create a reserve

for bad debts. Reserves should be accumulated over a period of years. The total amount should not exceed maximum expected losses, considering the quality of the intermediary lender's portfolio of loans. Unless the intermediary lender provides loss and delinquency records that, in the opinion of the Agency, justifies different amounts, a reserve for bad debts of 6 percent of outstanding loans must be accumulated over 5 years and then maintained.

(b) *Loan monitoring reviews.* The intermediary lender must complete loan monitoring reviews, including annual and periodic reviews, and performance monitoring.

(1) At least annually, the intermediary lender must provide the Agency documents for the purpose of reviewing the financial status of the intermediary Lender, assessing the progress of utilizing loan funds, and identifying any potential problems or concerns. Non-regulated intermediary lenders must furnish audited financial statements at least annually.

(2) At any time the Agency determines it is necessary, the intermediary lender must allow the Agency or its representative to review the operations and financial condition of the intermediary lender. Upon the Agency requests, the Intermediary must submit financial or other information within 14 days unless the data requested is not available within that time frame.

(c) *Progress reports.* Each intermediary lender will be monitored by the Agency based on progress reports submitted by the intermediary lender, audit findings, disbursement transactions, visitations, and other contact with the intermediary lender as necessary.

§ 769.122 Loan servicing.

(a) *Payments.* Payments will be made to the Agency as specified in loan agreements and debt instruments. The funds from any extra payments will be applied entirely to loan principal.

(b) *Restructuring.* The Agency may restructure the intermediary lender's loan debt, if:

(1) The Government's interest will be protected;

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(2) The restructuring will be performed within the Agency's budget authority; and

(3) The loan objectives cannot be met unless the HFIL loan is restructured.

(c) *Default.* In the event of monetary or non-monetary default, the Agency will take all appropriate actions to protect its interest, including, but not limited to, declaring the debt fully due and payable and may proceed to enforce its rights under the loan agreement or any other loan instruments relating to the loan under applicable law and regulations, and commencement of legal action to protect the Agency's interest. The Agency will work with the intermediary lender to correct any default, subject to the requirements of paragraph (b) of this section. Violation of any agreement with the Agency or failure to comply with reporting or other program requirements will be considered non-monetary default.

§ 769.123 Transfer and assumption.

(a) All transfers and assumptions must be approved in advance in writing by the Agency. The assuming entity must meet all eligibility criteria for the HFIL Loan Program.

(b) Available transfer and assumption options to eligible intermediary lenders include the following:

(1) The total indebtedness may be transferred to another eligible intermediary lender on the same terms; or

(2) The total indebtedness may be transferred to another eligible intermediary lender on different terms not to exceed the term for which an initial loan can be made. The assuming entity must meet all eligibility criteria for the HFIL Loan Program.

(c) The transferor must prepare the transfer document for the Agency review prior to the transfer and assumption.

(d) The transferee must provide the Agency with information required in the application as specified in § 769.109.

(e) The Agency prepared assumption agreement will contain the Agency case number of the transferor and transferee.

(f) The transferee must complete an application as specified in § 769.109(a).

(g) When the transferee makes a cash down-payment in connection with the

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transfer and assumption, any proceeds received by the transferor will be credited on the transferor's loan debt in order of maturity date.

(h) The Administrator or designee will approve or decline all transfers and assumptions.

§ 769.124 Appeals.

Any appealable adverse decision made by the Agency may be appealed upon written request of the intermediary as specified in 7 CFR part 11.

§ 769.125 Exceptions.

The Agency may grant an exception to any of the requirements of this part if the proposed change is in the best financial interest of the Government and not inconsistent with the authorizing law or any other applicable law.

PART 770—INDIAN TRIBAL LAND ACQUISITION LOANS

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AUTHORITY: 5 U.S.C. 301, 25 U.S.C. 488.

SOURCE: 66 FR 1567, Jan. 9, 2001, unless otherwise noted.

§ 770.1 Purpose.

This part contains the Agency's policies and procedures for making and servicing loans to assist a Native American tribe or tribal corporation with the acquisition of land interests within the tribal reservation or Alaskan community.

§ 770.2 Abbreviations and definitions.

(a) *Abbreviations.*

FSA Farm Service Agency, an Agency of the United States Department of Agriculture, including its personnel and any successor Agency.

ITLAP Indian Tribal Land Acquisition Program.

USPAP Uniform Standards of Professional Appraisal Practice.